



**Billing Code 4333–15**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**[FWS–R8–ES–2016–N230]; [FXES11140800000–178–FF08ECAR00]**

**Endangered and Threatened Wildlife and Plants; Incidental Take Permit  
Application; Proposed Low-Effect Habitat Conservation Plan and Associated  
Documents; City of Monterey Park, California**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), have received an application from Monterey Park Retail Partners, LLC (applicant) for a 5-year incidental take permit for the threatened coastal California gnatcatcher (*Poliioptila californica californica*) pursuant to the Endangered Species Act of 1973, as amended (Act). We are requesting comments on the permit application and on the preliminary determination that the proposed Habitat Conservation Plan qualifies as a “low-effect” habitat conservation plan, eligible for a categorical exclusion under the National Environmental Policy Act

(NEPA) of 1969, as amended. The basis for this determination is discussed in the environmental action statement (EAS) and the associated low-effect screening form, which are also available for public review.

**DATES:** Written comments should be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** *Submitting Comments:* You may submit comments by one of the following methods:

- *U.S. Mail:* Field Supervisor, Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 2177 Salk Avenue, Suite 250, Carlsbad, CA 92008.
- *Fax:* Field Supervisor, 760–431–9624.

*Obtaining Documents:* To request copies of the application, proposed HCP, and EAS, contact the Service, by telephone at 760–431–9440 or by letter to the Carlsbad Fish and Wildlife Office (see **ADDRESSES**). Copies of the proposed HCP and EAS also are available for public inspection during regular business hours at the Carlsbad Fish and Wildlife Office (see **ADDRESSES**).

**FOR FURTHER INFORMATION CONTACT:** Ms. Karen Goebel, Assistant Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES**); telephone: 760–431–9440. If you use a telecommunications device for the deaf, please call the Federal Relay Service at 800–877–8339.

**SUPPLEMENTARY INFORMATION:** We, the U.S. Fish and Wildlife Service (Service), have received an application from Monterey Park Retail Partners, LLC (applicant) for a 5-year incidental take permit for one covered species pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*, Act). The application addresses the potential “take” of the threatened coastal California gnatcatcher (*Polioptila californica californica*; gnatcatcher) in the course of activities associated with the construction, operation, and maintenance of the Monterey Park Market Place project, in the City of Monterey Park, Los Angeles County, California. A conservation program to avoid, minimize, and mitigate for project activities would be implemented as described in the applicant’s proposed habitat conservation plan (HCP).

We are requesting comments on the permit application and on the preliminary determination that the proposed HCP qualifies as a “low-effect” HCP, eligible for a categorical exclusion under the National Environmental Policy Act (NEPA) of 1969, as amended. The basis for this determination is discussed in the environmental action statement (EAS) and associated low-effect screening form, which are also available for public review.

## **Background**

Section 9 of the Act and its implementing Federal regulations prohibit the “take” of animal species listed as endangered or threatened. Take is defined under the Act as to “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed animal species, or to attempt to engage in such conduct” (16 U.S.C. 1538). “Harm” includes

significant habitat modification or degradation that actually kills or injures listed wildlife by significantly impairing essential behavioral patterns such as breeding, feeding, or sheltering (50 CFR 17.3). However, under section 10(a) of the Act, the Service may issue permits to authorize incidental take of listed species. “Incidental take” is defined by the Act as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species, respectively, are found in the Code of Federal Regulations at 50 CFR 17.22 and 50 CFR 17.32.

### **Applicant’s Proposed Project**

The applicant requests a 5-year permit under section 10(a)(1)(B) of the Act. If we approve the permit, the applicant anticipates taking gnatcatcher as a result of permanent impacts to 2.77 acres of habitat the species uses for breeding, feeding, and sheltering. The take would be incidental to the applicant’s activities associated with the construction of the Monterey Park Market Place project in the City of Monterey Park, California, and includes restoration and in-perpetuity preservation and management of 12 acres of gnatcatcher habitat.

The Monterey Park Market Place project consists of the construction of a 62-acre commercial retail development in the City of Monterey Park. The project will permanently impact 2.77 acres of gnatcatcher-occupied habitat as a result of clearing and grading activities. Up to three gnatcatcher territories have been documented on the project site.

To minimize take of gnatcatcher by the Monterey Park Market Place project and offset impacts to its habitat, the applicant proposes to mitigate for permanent impacts to 2.77 acres of occupied gnatcatcher habitat through the restoration, conservation, and in-perpetuity management of 12 acres of coastal sage scrub suitable for the gnatcatcher by a Service-approved restoration contractor and the Puente Hills Habitat Authority. The applicant's proposed HCP also contains the following proposed measures to minimize the effects of construction activities on the gnatcatcher:

- Grading limits will be delineated with construction fencing and silt fencing to ensure that impact limits do not extend beyond the allowed limits of development.
- A Service-approved biologist will monitor grading of the site and provide a letter summarizing compliance with the construction limits of the proposed project to the Service within one month of completion of grading.
- Vegetation clearing will take place outside of the bird nesting season (February 15 through August 31) to the fullest extent practicable. Clearing may only occur during this period once a Service-approved biologist has conducted at least three surveys of the impact areas for nesting birds, with each survey taking place one week apart and the last survey conducted within 24 hours prior to clearing. The Service-approved biologist will document compliance with the Migratory Bird Treaty Act (MBTA) and other applicable regulations that protect nesting birds. If an active bird nest is observed, an appropriate buffer (minimum of 300 feet for any active gnatcatcher nest) will be established wherein no project activities will occur until the nest is no longer active.

## **Proposed Action and Alternatives**

The Proposed Action consists of the issuance of an incidental take permit and implementation of the proposed HCP, which includes measures to avoid, minimize, and mitigate impacts to the gnatcatcher. If we approve the permit, take of gnatcatcher would be authorized for the applicant's activities associated with the construction of the Monterey Park Market Place project. In the proposed HCP, the applicant considers alternatives to the taking of gnatcatcher under the proposed action. Alternative development configuration was considered; however, because of the small size and irregular shape of the project site, further avoidance of impacts to gnatcatcher habitat could not be achieved. The applicant also considered the No Action Alternative. Under the No Action Alternative, no incidental take of gnatcatcher habitat would occur, and no long-term protection and management would be afforded to the species.

## **Our Preliminary Determination**

The Service has made a preliminary determination that the approval of the HCP and issuance of an incidental take permit qualify for categorical exclusion under NEPA (42 U.S.C. 4321 *et seq.*), as provided by the Department of the Interior implementing regulations in part 46 of title 43 of the Code of Federal Regulations (43 CFR 46.205, 46.210, and 46.215), and that the HCP qualifies as a "low-effect" plan as defined by the *Habitat Conservation Planning Handbook* (December 2016).

We base our determination that an HCP qualifies as a low-effect plan on the following three criteria:

- (1) Implementation of the HCP would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats;
- (2) Implementation of the HCP would result in minor or negligible effects on other environmental values or resources; and
- (3) Impacts of the HCP, considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not result, over time, in cumulative effects to environmental values or resources that would be considered significant.

Based upon this preliminary determination, we do not intend to prepare further NEPA documentation. We will consider public comments in making the final determination on whether to prepare such additional documentation.

### **Next Steps**

We will evaluate the proposed HCP and comments we receive to determine whether the permit application meets the requirements and issuance criteria under section 10(a) of the Act (16 U.S.C. 1531 *et seq.*). We will also evaluate whether issuance of a section 10(a)(1)(B) incidental take permit would comply with section 7 of the Act by conducting an intra-Service consultation. We will use the results of this consultation, in combination with the above findings, in our final analysis to determine whether or not to

issue a permit. If the requirements and issuance criteria under section 10(a) are met, we will issue the permit to the applicant for incidental take of gnatcatcher.

### **Public Comments**

If you wish to comment on the permit application, proposed HCP, and associated documents, you may submit comments by any of the methods noted in **ADDRESSES**.

### **Public Availability of Comments**

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

### **Authority**

We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*) and NEPA regulations (40 CFR 1506.6).

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**Karen A. Goebel,  
Acting Field Supervisor,  
Carlsbad Fish and Wildlife Office,  
Carlsbad, California.**

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